Supreme Court, U.S.
FILED
JAN 27 1999
CLERK

No. 98-1041

In The
Supreme Court of the United States
October Term, 1998

THE SECRETARY OF THE WISCONSIN DEPARTMENT OF HEALTH AND FAMILY SERVICES, ET AL.,

Petitioners,

v.

PATRICK ADDIS, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether Wisconsin's Family Fiscal Unit (FFU) policy, as applied to Medical Assistance applicants who have their own income or resources and who are not financially responsible for the support of other household members, violates 42 U.S.C. § 1396a(a)(17)(D) by using a reduced standard of need for these applicants.

LIST OF PARTIES

Petitioners' list of parties accurately describes the petitioners here.

The names of the respondents (the appellants in the Court of Appeals) are: Patrick Addis, Ryan Addis and Sara Addis by their next friends Patrick and Michelle Addis; Craig Johnson by his next friend Donna Worrall; Robert Taloff; Trisha Taloff and Joseph Taloff by their next friends Robert and Janice Taloff. The other respondents listed in the petition were not parties to the proceedings in the Court of Appeals.

This action was originally filed as a class action, but the class has not yet been certified.

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RESPONDENTS' BRIEF IN OPPOSITION

Respondents respectfully request that this Court deny the petition for writ of certiorari, seeking review of the judgment of the United States Court of Appeals for the Seventh Circuit. That opinion is reported at 153 F.3d 836.

JURISDICTION

The judgment of the United States Court of Appeals for the Seventh Circuit was entered on September 4, 1998. Petitioners' Petition for Rehearing With Suggestion of Rehearing En Banc was denied on October 5, 1998. Petitioners' Petition for a Writ of Certiorari was docketed in this Court on December 29, 1998. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

This is a complex case involving the validity of various aspects Wisconsin's Medical Assistance (MA) program. On December 6, 1993, respondents (plaintiffs below) filed their complaint seeking declaratory and injunctive relief on behalf of a class. Motions for class certification and for a preliminary injunction were filed with the complaint. On September 25, 1996, the district court dismissed the complaint, and, in light of that dismissal, also denied the motions for class certification and preliminary injunction.

The Seventh Circuit Court of Appeals (POSNER, Chief Judge, and CUMMINGS and ROVNER, Circuit Judges) considered three separate issues, affirming in part and reversing in part the district court judgment. The Seventh Circuit declined, however, to order the district court to grant the motion for a preliminary injunction, and instead remanded the case to the district court for further proceedings not inconsistent with its opinion. 153 F.3d at 844 (App. A-18). No further proceedings in the district court have been held.

A number of issues remain undecided at this time. The class definition originally described two groups of class members. One group consisted of Medical Assistance (MA) applicants and recipients whose eligibility for health care coverage under the MA program was adversely affected by the Family Fiscal Unit (FFU) policy. The other group consisted of disabled adult parents who had applied for health care coverage under the MA program and whose eligibility for coverage was considered without disregarding income allocated for the support of their children. Distinct claims for relief were pleaded by each group of class members.

The district court dismissed all the claims. The Seventh Circuit affirmed the dismissal of the claims raised by the disabled parents, but reversed the dismissal of the claim brought by persons affected by the FFU policy. It is that claim which is the subject of this petition.

Wisconsin implemented the FFU policy in 1993 in order to bring the MA eligibility determination process into compliance with the Social Security Act, 42 U.S.C. § 1396a(a)(17)(D). 153 F.3d at 841 (App. A-11). The FFU policy sets up a methodology for dividing a household whose members are applying for MA into separate "fiscal test groups." 153 F.3d at 839 (App. A-7). Separate fiscal test groups are needed to avoid the problem of considering income and/or resources that belong to household members who are not legally liable for the support of other household members. The petitioners and respondents here agree that the use of separate fiscal test groups is essential in order to comply with 42 U.S.C. § 1396a(a)(17)(D) (Pet. 4 and 6).

In addition to requiring separate fiscal test

groups, the FFU policy also made another change in the MA eligibility process. The FFU policy mandated reduced assistance standards for the fiscal test groups. 153 F.3d at 839 (App. A-8). Instead of comparing the fiscal test group's income to the eligibility standards established by the Wisconsin Legislature, the fiscal test group's income is compared to a reduced standard. The reduced standard is calculated by taking the standard for the entire household group and dividing it by the number of household members. 153 F.3d at 839 (App. A-8). It is this reduced standard that the Seventh Circuit, following the reasoning of a California federal district court adopted by the Ninth Circuit in *Sneede v. Kizer,*728 F.Supp. 607 (N.D.Cal. 1990), *aff'd mem.*, 951 F.2d 360 (9th Cir.1991), *cert. denied,* 506 U.S. 939 (1992), determined was not permitted under 42 U.S.C. § 1396a(a)(17)(D).

The decision of the Seventh Circuit does not rewrite the petitioners' FFU policy or direct petitioners as to how their FFU policy must be rewritten to comply with 42 U.S.C. § 1396a(a)(17)(D). Contrary to petitioners' assertion (Pet. 7), the Seventh Circuit's decision does not require Wisconsin's MA program to use assistance standards based on one-half of the standard for a family of two and one-third of the standard for a family of three. This methodology, or others, may be considered in further proceedings before the district court.

REASONS FOR DENYING THE WRIT

This case concerns the intricacies of the MA program established under Title XIX of the Social Security Act. As the Seventh Circuit observed in its opinion, operating an MA program in compliance with the Social

Security Act and its implementing regulations is "not always an easy task given the maze of statutory provisions and federal regulations involved." 153 F.3d at 838 (App. A-5). The MA program contains overlapping layers of eligibility requirements, and each state's program is unique.

The intricacies of the MA program, however, should not complicate this Court's consideration of the petition. The petition should be denied because there is no conflict among the Courts of Appeals, because the decision of the Seventh Circuit does not conflict with any decisions of this court, because the Seventh Circuit correctly interpreted federal law, and because – at its current stage of development – this case does not present an important issue of federal law.

The particular eligibility question at stake here has been considered by two Courts of Appeals. Both the Seventh Circuit here and Ninth Circuit in *Sneede* reached identical conclusions in interpreting 42 U.S.C. § 1396a(a)(17)(D). This Court declined to review the *Sneede* decision in 1992. No other appellate court has considered this issue.

The Seventh Circuit's well-reasoned, thorough decision carefully considered the competing and intricate demands of the Social Security Act. Contrary to petitioners' argument, the Seventh Circuit's decision that the use of reduced assistance standards is contrary to 42 U.S.C. § 1396a(a)(17)(D) does not conflict with either *Bowen v. Gilliard,* 483 U.S. 587 (1987), or *Anderson v. Edwards,* 514 U.S. 143 (1995). (Pet. 7-8). Those decisions discuss the eligibility process in a different public assistance program, the Aid to Families with Dependent Children (AFDC) program. The eligibility determination processes for AFDC

and MA are very different. *See* cases cited by the Seventh Circuit, 153 F.3d at 841 (App. A-11).

The differences between AFDC and MA were highlighted in the background discussion which accompanied final rules issued by the Health Care Financing Administration (HCFA) of the Department of Health and Human Services on August 22, 1994. 59 Fed. Reg. 43051. The HCFA rules would have mandated a method for states to follow in situations like the situation presented by this case. HCFA explained the differences between AFDC and MA:

> ...an AFDC statutory change in 1984 mandated that all family members living together be considered one family unit for AFDC eligibility purposes and that the income and resources of all family members be pooled. As a result, AFDC sometimes requires attributing income and resources from persons other than spouses or parents (siblings, stepparents, grandparents, legal guardians and alien sponsors) as available to the applicant or recipient. Use of the AFDC methods for cases involving income from persons other than spouses or parents, however, is contrary to section 1902(a)(17)(D) of the Act. [42 U.S.C. § 1396a(a)(17)(D)]

59 Fed. Reg. 43051.

In these final rules, HCFA withdrew its earlier regulations before they became effective and declined to mandate a specific eligibility determination process. Contrary to the assertion of the petitioners here, the decision of the Seventh Circuit does not conflict with the HCFA

regulations (Pet. 8) because those regulations were withdrawn before being implemented.

Nor does this case, at its current stage of development, present an important issue of federal law. Wisconsin's FFU policy is a small part of Wisconsin's MA program. The impact of the Seventh Circuit decision has not been considered by the district court. Questions of class membership, class certification, and methods of implementation remain unanswered.

CONCLUSION

For the reasons given above, respondents respectfully request that the petition be denied.

Respectfully Submitted,

January, 1999

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